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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/603,001

06/24/2003

C. Paul Cox

P-137 / TEP0237-01

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07/27/2006

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EXAMINER

FREAY, CHARLES GRANT

ART UNIT

PAPER NUMBER

3746

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

C

Office Action Summary	Application No.	Applicant(s)	
	10/603,001	COX ET AL.	
	Examiner	Art Unit	
	Charles G. Freay	3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 13-16 is/are allowed.
 6) ☒ Claim(s) 1-12, 17-19 and 21 is/are rejected.
 7) ☒ Claim(s) 20 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 7 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohashi et al (USPN 6,487,856) as set forth in the office action of March 3, 2006.

Claims 1, 7, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Okada et al (USPN 5,473,964).

Okada et al disclose in Fig. 3 an endcap (3) for a hydrostatic pump comprising a housing and a pair of system passages (3a,3b), each system passage being connected to the hydrostatic pump (note the kidney openings 3a' and 3b'), and each system passage being connected to a pair of system ports in an exterior of the end cap housing. Further there are plugs which close the ends of the passages. As shown in Fig. 7 there is a pump housing or casing (1) and the endcap (3) is exterior to the housing and therefore the system ports are exterior to the housing.

DETAILED ACTION

This office action is in response to the amendment of June 5, 2006. In making the below rejections and/or objections the examiner has considered and addressed each of the applicant's arguments.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite because it is unclear from each of claims 1 and 7 if the applicant intends to claim the endcap or the entire pump and endcap arrangement. The claims set forth that they are directed to an endcap, but the preamble and the newly amended "accessible" limitation relate to the entire pump assembly. For the purposes of examination the examiner has assumed that the claims are directed to the endcap and that the limitations relating to the pump and the "accessible" limitation are directed to desired uses and capabilities of the endcap. The "accessible" limitation is also confusing because it sets forth that the "system ports are accessible from an exterior of the pump housing". However, the system ports are not part of the exterior of the housing, they are on the exterior of the endcap.

Claims 1, 7 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Aoi et al (USPN 4,962,675) as set forth in the office action of March 3, 2006.

The examiner notes that Fig. 5 clearly shows the endcap being mounted exterior to the pump housing.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over either of Ohashi et al, Okada et al or Aoi et al for the reasons set forth in the previous office action.

Allowable Subject Matter

Claims 13-16 are allowed.

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2-6 and 8-12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed June 5, 2006 have been fully considered but they are not persuasive. With regards to the Ohashi et al and Aoi et al references the applicant argues that these references disclose either check valves or plugs at the ends of the system passages and thus these ports are not system ports. With regards to the Okada et al reference the applicant argues that the endcap is completely within the housing (the transaxle housing). The examiner disagrees.

First, with regards to the Ohashi et al and Aoi et al references the examiner takes the position that the applicant is defining the "system ports" by what is disclosed instead of by the limitations recited in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that system ports are ports which do not have valves or plugs in them) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner finds that the ports disclosed in Ohashi et al and Aoi et al are system ports when given their broadest reasonable meaning. The examiner also note that in paragraph [0052] of his specification it is discussed that one of the ends of the passages will be closed by a plug. Thus the applicant's system ports do include ports with elements mounted therein.

With regards to the Okada et al reference the examiner notes that the above rejection clearly points out that Okada et al discloses a pump housing (1) in Fig. 5 where the endcap and thus the system ports are exterior to the pump housing.

Conclusion

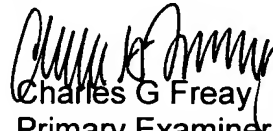
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Charles G Freay
Primary Examiner
Art Unit 3746

CGF
July 15, 2006